

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
PARKVIEW DEVELOPMENT CORPORATION
and DENNIS SOLARI,

Appellants,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 78-196

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$250 civil penalty for outdoor burning (smoke and flyash) allegedly in violation of respondent's Section 9.11(a) of Regulation I, came on for hearing before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, Member, convened at Seattle, Washington on November 1, 1978. Hearing examiner William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellants, Parkview Development Corporation and Dennis Solari, appeared by the Corporation's President, John Hansen. Respondent

1 appeared by its attorney, Keith D. McGoffin. Reporter Marilyn Hoban
2 recorded the proceedings.

3 Witnesses were sworn and testified. Exhibits were examined. From
4 testimony heard and exhibits examined, the Pollution Control Hearings
5 Board makes these

6 FINDINGS OF FACT

7 I

8 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
9 a certified copy of its Regulation I containing respondent's regulations
10 and amendments thereto, of which official notice is taken.

11 II

12 Appellant Parkview and its employee Solaris sought to clear land
13 in Kirkland for construction of a condominium complex. The plans called
14 for disposal of the cleared vegetation by burning. Before conducting
15 this burning, the appellants obtained a written permit from the local
16 fire department and a written "Population Density Verification" from
17 respondent air authority. The Population Density Verification (Exhibit
18 R-1) confirmed that human population is low enough in the area concerned
19 to allow a landclearing fire. The face of the Population Density
20 Verification contains, however, the following warning:

21 Smoke, odor, flyash and/or other air contaminants must not
22 be allowed to cause detriment to the health, safety or
23 welfare of any person or cause damage to property or
24 business. (Section 9.11(a)).

24 III

25 On June 23, 1978 at 7:00 AM, appellants ignited the pile of natural
26 vegetation cleared from the site. The material on fire was about 30 feet

1 in diameter, 15 feet high, and centered within the 300-foot by 300-foot
2 lot. The wind was about five knots.

3 At 2:30 PM the same day, the wind had increased to ten knots. Smoke
4 and flyash from the fire blew onto the adjoining lot and apartment
5 building. An occupant of the apartment made a complaint to the respondent
6 who sent an inspector to the scene. Upon arriving just prior to 3:00 PM,
7 respondent's inspector observed flyash from appellant's fire on the
8 apartment window sills, walkways, a trailer boat, and on the apartment
9 grounds. Small fires from falling sparks had sprung up in the apartment
10 flower beds. The inspector issued a Notice of Violation to appellants
11 and appellants subsequently received a Notice and Order of Civil Penalty
12 No. 3907 imposing a penalty of \$250. From this, appellants appeal.

3 IV

14 The appellants have no prior record of any violation of the
15 regulations of respondent. For two weeks after the date in question,
16 burning at the same site continued without further incident.

17 V

18 Any Conclusion of Law which should be deemed a Finding of Fact is
19 hereby adopted as such.

20 From these Findings, the Pollution Control Hearings Board comes to
21 these

22 CONCLUSIONS OF LAW

23 I

24 Respondent's Section 9.11(a) of Regulation I provides:

25 It shall be unlawful for any person to cause or permit the
; emission of an air contaminant or water vapor, including an
air contaminant whose emission is not otherwise prohibited

1 by this Regulation, if the air contaminant or water vapor
2 causes detriment to the health, safety or welfare of any
person or causes damage to property or business.

3 By Section 1.07(b and w) smoke, sparks and flyash are air
4 contaminants. By Section 3.29 respondent may impose a civil penalty
5 of up to \$250 per day for each violation of any provision of its
6 Regulation I.

7 II

8 The smoke, sparks and flyash of appellants' fire on the day in
9 question, constituted a significant detriment to the welfare of the
10 complainant and other occupants of the adjoining apartment building.
11 Appellants therefore violated respondent's Section 9.11(a) of
12 Regulation I.

13 III

14 Although the wind speed increased and thus aggravated the situation
15 after appellants' fire was already ignited, this change in conditions
16 does not lessen their responsibility under the regulation. Because
17 appellants had obtained the necessary fire permits, had not violated
18 respondent's regulations in the past, took prompt mitigating action
19 after being notified of the violation, and burned without incident at
20 the same site after this violation, the \$250 civil penalty should be
21 mitigated by suspension in part.

22 IV

23 Any Finding of Fact which should be deemed a Conclusion of Law is
24 hereby adopted as such.

25 From these Conclusions, the Board enters this

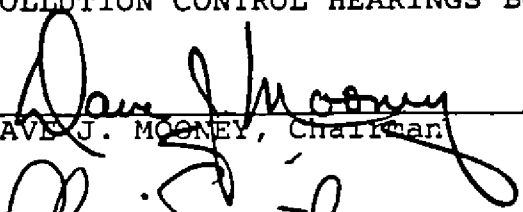
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER


ORDER

The \$250 civil penalty (No. 3907) is affirmed, provided, however, that \$100 of the penalty is suspended on condition that appellants not violate respondent's regulations for a period of six months from the date of appellants' receipt of this Order.

DONE at Lacey, Washington, this 22ND day of November, 1978.

POLLUTION CONTROL HEARINGS BOARD


DAVE J. MOONEY, Chairman


CHRIS SMITH, Member